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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052197
Party	Defendant Supercar Collectibles Limited
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Submission	Other Motions/Papers
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Date	06/02/2011
Attachments	OppSuppMotion.pdf (5 pages)(521235 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of United States Trademark Registration No. 2,049,847

Terri Yenke Gould, Executor)	
)	Cancellation No.:92052197
Petitioner,)	
)	
vs.)	
)	
General Marketing Capital, Inc./Supercar)	
Collectables Limited)	
)	
Respondent.)	
_____)	

**Respondent's Opposition to Petitioner's Supplemental Motion to
File Testimony Out of Time**

Respondent opposes Petitioner's "Supplemental Motion to File Testimony Out of Time."

Respondent is unable to locate any applicable rule or regulation that provides for filing of a "supplemental" motion. Accordingly, Respondent is treating this as a new motion.

The simple fact is that Petitioner could and should have served the appropriate expert and pretrial disclosures and it could and should have conducted live testimonial depositions, in accordance with the applicable Federal Rules of Civil Procedure, Federal Rules of Evidence and Trademark Rules. Furthermore, before leaving for his vacation in Paris, Petitioner's counsel could and should have seen to it that these important matters would be attended to and that provisions were

in place to accomplish timely filing and service of papers in accordance with the rules. However, Petitioner did none of these fundamental things.

Instead, Petitioner and its counsel chose to ignore this proceeding from early January until mid April. Then, on the last day of Petitioner's testimony period, Petitioner proceeded to file highly controversial testimonial declarations (which contain purported expert opinion testimony and even testimony from counsel of record) despite the fact that Petitioner's request for a stipulation to permit filing such declaration testimony had been expressly denied. Petitioner also chose to simply e mail the wrongfully filed testimonial documents to Respondent's counsel rather than serving them in compliance with the rules.

Petitioner has provided no excuse, reason or explanation for having ignored the applicable rules and regulations in such a brazen manner. Obviously, Petitioner's actions were intended to pollute the testimonial record in this case with highly controversial testimony from unqualified witnesses without allowing Respondent any opportunity to object or cross-examine. Petitioner argues that it should be allowed to get away with such abhorrent behavior "in the interest of giving both parties full and fair opportunity to present their cases." Petitioner also contends that "Respondent will in no way be prejudiced by the granting of this motion." These statements are absurd.

Petitioner did have a full and fair opportunity to provide expert and pretrial disclosures in accordance with the applicable rules. Petitioner did have a full and fair opportunity to notice and take live testimonial depositions, with opposing counsel present for objection and cross-examination, in accordance with the applicable law and regulations. Petitioner did have a full and fair opportunity

to file a timely notice of reliance. However, Petitioner chose not to do any of these things. Instead, Petitioner simply sat by and did nothing from early January until the very end of its testimony period. Then, in a flurry of last minute activity and name calling, Petitioner whipped together four (4) testimonial declarations filled with highly disputed content and then wrongfully filed those declarations knowing full well that it lacked the stipulation required for such filing. To allow these wrongfully-filed testimonial declarations and their exhibits to remain in the record, as requested in this motion, would severely prejudice Respondent in numerous ways. For example, allowing these testimonial declarations and exhibits to remain would prejudice respondent by: a) denying Respondent the benefit of pretrial expert disclosures/reports/discovery; b) denying Respondent the opportunity to make an informed and timely decision whether it should retain its own rebuttal expert(s); c) precluding Respondent from interposing, on the record, specific objections to specific questions, answers or exhibits comprising the testimony of Petitioner's four (4) testimonial witnesses and d) precluding Respondent from cross-examining Petitioner's four (4) testimonial witnesses during Petitioner's case in chief. Moreover, granting this baseless motion would allow Petitioner's counsel of record (George Bullwinkel) to act simultaneously as an expert trial witness and Petitioner's counsel of record.

Further details as to how Respondent would be prejudiced by the granting of this motion are set forth in Respondent's Motion to Strike Testimonial Declarations and its reply brief filed in connection with that motion to strike. It is respectfully requested that the Board consider those papers before acting on this "supplemental" motion.

Petitioner correctly points out that Respondent owns many United States trademark

applications and registrations for YENKO trademarks. What Petitioner fails to mention is that, from the early 1990's until late 2009, Petitioner fully acquiesced in and raised no opposition or objection to any of those trademark registrations or to the open and continuous sales of goods under those marks by Respondent and Respondent's predecessors. It was Respondent, not Petitioner, who invested time, effort and money required to service and expand the market for YENKO automotive goods from the early 1990's to date. It was not until 2009, when General Motors introduced its fifth generation Chevrolet Camaro after not having marketed a Camaro model for approximately 7 years, that Petitioner and its "licensee" envisioned an opportunity to cash in and began their program of nebulous allegations, bellicose threats and purposeful disparagement against Respondent.

In short, the testimonial declarations and exhibits were filed without any stipulation, in purposeful violation of the applicable rules, in an effort to prevent Respondent from objecting to or cross-examining these testimonial witnesses. Petitioner has provided no explanation or excuse for such behavior. Thus, the proffered testimonial declarations and accompanying exhibits must be stricken from the record and Petitioner's "supplemental" motion must be denied.

Respectfully submitted,

STOUT, UXA, BUYAN & MULLINS, LLP

June 2, 2011

/Robert D. Buyan/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Respondent's Opposition to Petitioner's Supplemental Motion to File Testimony Out of Time has been served on George E. Bullwinkel, Esq. by mailing said copy on June 2, 2011, via First Class Mail, postage prepaid to:

George E. Bullwinkel
Attorney at Law
425 Woodside Avenue
Hinsdale, IL 60521



Gabriela Zuniga